REMARKS

In the aforementioned Advisory Action the Examiner states that applicant's arguments filed 4/10/07 are not persuasive and that applicant failed to provide persuasive argument to withdraw the finality of the rejection of the previous Office action. The Examiner has the right, of course, to conclude that applicant's arguments are not persuasive; but not when it is based on a fallacious argument.

The Examiner states that

> As admitted by Applicant, the Final rejection is identical to the rejection of the previous Office action. Therefore, Applicant had an opportunity to argue the claims rejection and Applicant's argument have been answered in the Final rejection.

The latter does not logically flow from the former. An Examiner might simply state "claim 1 is rejected under 35 USC 103", but without more it is insufficient. More importantly, merely repeating the same rejection does not remedy the initial failing. Hence, the fact that applicant admitted that the Final rejection is identical to the first rejection is not an *admission against interest.*

In the case at hand, applicants have stated, in response to the Final Office Action that:

> in connection with many of the claims there had been no explanation given by the Examiner [in the first Office Action] of the reasons for rejecting the claims. Now the reasons have been provided (though the Examiner has still failed to formally state the statutory basis for the rejection), but applicant is faced with a FINAL office action, without the ability to amend or to have the instant response entered as a matter of right. Respectfully, applicant is entitled to at least one "bite at the apple" ***with respect to each of the claims***. (parenthetical expression added).

The Examiner does not contest the factual statement (that no explanation has been given) and yet refuses to grant applicant the opportunity to amend the claim (by withdrawing the finality of the rejection). This unreasonable position is costing applicant $740 to file the present RCE, so that an amendment to the claims can be effected. This is not fair to applicant.

Substantively, applicant respectfully submits that the Examiner is misreading the Vanghi reference. The Examiner's attention is respectfully directed to the detailed rebuttals provided in the April 10, 2007 amendment, with a request of a careful

consideration, and to the affidavit submitted herewith. If the Examiner disagrees with any statements, an explanation of the reasons for the disagreement would be greatly appreciated.

In light of the above amendments and remarks, applicant respectfully submits that all of the Examiner's outstanding rejections have been overcome. Reconsideration and allowance are respectfully solicited.

Respectfully,
Wen-Yi Kuo

Dated: 5/6/07

By _____
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IN THE UNITED STATES
PATENT AND TRADEMARK OFFICE

Patent Application

Inventor(s)	Wen-Yi Kuo	Serial No.	09/883,346
		Filing Date	6/19/2001
		Examiner	Dmitry Levitan
Case Name	Kuo 1999-0802	Art Unit	2662
Title	Error-Rate Management in Wireless Systems		

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SIR:

AFFDAVIT UNDER 37 CFR 1.132

1. My name is Henry Brendzel. I have a BS in Electrical Engineering from NJIT, an MS in Electrical Engineering from MIT, and about 30 credits post MS, in Electrical Engineering and Computer Science, from NYU
2. I worked at AT&T- Bell Laboratories as a Member of the Technical Staff for nine years.
3. I am familiar with various communication technologies, such as TDM, PCM, CDMA, OFDM, etc.
4. I read US Patent 6,711,150, issued March 23, 2004 (henceforth, the '150 reference), and the following conclusions regarding the teachings in US Patent 6,711,150 is based on my knowledge and experience.
5. The '150 reference relates to transmissions of data bursts in a CDMA system. Because all transmitting user stations transmit on the same frequency band, the power used by the transmitting stations must be controlled so that no undue interference is created. It is a balance between transmitting with greater power so that the transmitted information is received properly, and transmitting with lesser power so that interference to others is minimized.
6. The system of the '150 reference has an outer control loop that determines the target signal to noise ratio (SNR) and an inner control loop that attempt to keep

the user stations performing close to the target SNR (to thus maintain the aforementioned balance).

7. In the system of the '150 reference the receiving station transmits power control commands to the transmitting user stations either increase or decrease the transmit power (col. 4, lines 44-49).
8. The thrust of the invention in the '150 reference is the method of the outer loop power control (col. 5, lines 5-6), which operates to cause frames that have already to be received correctly to be transmitted during a re-transmission with very low power (so that they are not received correctly) but with each frame that is not received correctly the power is increased in such an amount that a frame that has NOT been previously received correctly is transmitted during the re-transmission so that it can be received correctly.
9. More particularly, a user station sends a message, which is the data burst (col. 1, line 31) that comprises a plurality of frames.
10. The objective is to not merely send the message, but to make sure that all frames of the message have been received correctly (col. 5, lines 16-19).
11. A receiving station stores only the frames that were received correctly (col. 5, lines19-21), and the frames that were NOT received correctly are re-transmitted.
12. This is illustrated in FIG. 2, where, initially, the *effective* message length is the length of the original message, n, but after the initial transmission and a determination that only frame 2 was received correctly, during the first re-transmission the *effective* message length is n-1. In the course of that first re-transmission frame 1 is received correctly, so during the second re-transmission the *effective* message length is n-2. In the course of the second re-transmission frame n is received correctly so during the third re-transmission the *effective* message length is n-3 (col. 5, lines 40-62).
13. While the effective message length varies, and can only become lower with each re-transmission, the actually message that is sent remains the same. This is evident from col. 6, lines 39-64, but it is most clear evident in FIGS. 3.
14. At the beginning of each re-transmission, the inner power loop is adjusted based on the "effective message length," which is the remaining frames yet to be

received correctly (col. 5, lines 21-25), and in the course of each transmission, the power is controlled, either down, or up, based on whether the frame is received correctly or not (col. 6, lines 45-54). Consequently, the power level for each frame is different from the power level of the preceding frame.

15. FIG. 3A shows a "first transmission," and a "second transmission" (which is the first re-transmission). As depicted, in the first transmission 6 frames are sent (6 being the illustrated number of frames in the message; i.e., n=6), and frames 3 and 5 are shown as "bad frames," i.e., frames that were not received correctly. During the re-transmission, the thresholds are adjusted so that the first two frames are not received correctly, but subsequent frames are received correctly.
16. To summarize the '150 describes the process for sending a message, which is a data burst that comprises frames. If less than all of the frames are received correctly, the entire message is retransmitted. There is no notion of a "block" of frames in the '150 reference, where a block contains a fixed number of frames. Each frame of a transmitted message – whether it is a first transmission or a re-transmission – is transmitted at its own power level that is always different from the power level of the immediately previous frame.

Dated: 5/6/07

Respectfully,
By _____
Henry T. Brendzel